

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHAD POWELL)	
Claimant)	
VS.)	
)	Docket No. 244,711
JAMESON TRUCKING COMPANY, INC.)	
LONGHORN PRODUCE, INC.)	
Respondents)	
AND)	
)	
UNKNOWN)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent Longhorn Produce, Inc. ("Longhorn") appeals the Order issued by Administrative Law Judge Steven J. Howard on January 14, 2000. The Appeals Board heard oral argument June 14, 2000.

APPEARANCES

Thomas E. Hayes of Pittsburg, Kansas, appeared on behalf of claimant. John I. O'Connor of Pittsburg, Kansas, appeared on behalf of respondent Longhorn. Edwin H. Bideau III of Chanute, Kansas, appeared on behalf of the Kansas Workers Compensation Fund.

ISSUES

Claimant brought this claim against his immediate employer, Jameson Trucking, Inc. ("Jameson") for accidental injury on April 8, 1999. Claimant has also impleaded the Kansas Workers Compensation Fund pursuant to K.S.A. 44-532a, alleging Jameson is uninsured and otherwise unable to pay workers compensation benefits. The Fund moved to implead Longhorn, claiming Longhorn should pay the benefits as claimant's statutory employer under K.S.A. 44-503. The Administrative Law Judge granted that motion, and Longhorn appeals.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Fund, under the circumstances presented here, cannot implead the principal and the Order should be reversed.

K.S.A. 44-532a authorizes the claimant to have benefits paid by the Fund in cases where the employer has not purchased insurance and is otherwise unable to pay benefits. In cases where there is a principal contractor, K.S.A. 44-503 authorizes an alternative. That statute allows the claimant to bring the claim against the principal contractor instead of the immediate employer (subcontractor) if the immediate employer has not secured the payment of compensation by purchase of insurance or otherwise. If the claimant chooses to bring the claim against the principal, the principal has a right to subrogation from any person who would otherwise be liable. K.S.A. 44-503(e) expressly authorizes the principal to implead the immediate employer.

In cases where the Fund has paid, the Act gives the Fund a right to recover from the employer but expressly provides for the Fund's claim to be made in district court. K.S.A. 44-532a(b). In *Workers Compensation Fund v. Silicone Distributing, Inc.*, 248 Kan. 551, 809 P.2d 1199 (1991), the Kansas Supreme Court construed the reference to employer in K.S.A. 44-532a(b) to include the principal contractor, often referred to as the statutory employer.

As applied to this case, the *Silicone Distributing* decision means that the Fund could bring an action against Longhorn in district court to recover any benefits it is required to pay claimant. The ALJ has, however, by granting the motion to implead Longhorn, sought to accomplish the same result in the workers compensation proceedings. But the Kansas Supreme Court appears to have reached a contrary conclusion in the *Silicone Distributing* case:

The Act does not provide a mechanism for the Fund to implead the principal of the immediate employer. K.S.A. 44-532a(b) specifically provides that the Fund's action against the employer shall be filed in the district court. If the Fund is liable as a result of an immediate employer's failure to pay, it may assert a cause of action against the principal in a separate action under K.S.A. 44-532a(b).

While placing the cause of action in district court may not be the most expeditious, the Board does not believe it should or even could, in light of the *Silicone Distributing* decision, create a potentially conflicting dual jurisdiction by allowing the Fund the right to implead the principal.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Steven J. Howard on January 14, 2000, should be, and the same is hereby, reversed. The motion to implead Longhorn is denied.

IT IS SO ORDERED.

Dated this ____ day of June 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Thomas E. Hayes, Pittsburg, KS
John I. O'Connor, Pittsburg, KS
Edwin H. Bideau III, Chanute, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director